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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-105

THE NORTHERN CHEYENNE TRIBE,

Petitioner,

v.

WILLIAM HOLLOWBREAST, et al.,

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Lewis E. Brueggemann
Attorney for Respondents

Office and Post Office Address:
Rooms 256-7-8 Hart-Albin Building
Billings, Montana 59101

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INTRODUCTION

This opposition is filed in response to the petition for a writ of certiorari filed by the petitioner tribal corporation on or about the 25th., day of July, 1975. Respondents oppose such a review on two counts:

1. The United States Court of Appeals for the Ninth Circuit committed no error; and

2. Since a review on a writ of certiorari,

> ". . . . . is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefore . . . . . "

it should be denied. (Rule 19, 1 et seq., emphasis supplied.)

LITIGATION HISTORY

The Northern Cheyenne Tribe., Inc., at the direction of Congress, (Act of July 28th., 1968; 82 Stat. 424, 425) brought this action in the District Court under a special grant of jurisdiction against respondents, individual owners, and class representatives of all allottees, their heirs and devisees, owning allotments of land within the exterior boundaries of the tribal reservation on or about July 2nd., 1970.

At stake are the rights to the mineral deposits contained in and beneath these allotted lands. In 1964, Congress attempted to reserve these deposits in perpetuity for the benefit of the tribal corporation, provided the tribal corporation institute this suit,

> ". . . . To determine whether under the provisions of the Act of June 3rd., 1926 (44 Stat. 690), as amended, the allottees, their heirs or devisees have received a vested property right (in the minerals) which is protected by the Fifth Amendement . . . . . "

to the United States constitution. (Insert supplied;

Act of July 28th., 1968; cited supra.)

The District Court held that no property rights were received and awarded judgment, including all prospecting permit and lease monies, to the tribal corporation on or about September 29th., 1972. Rehearing was denied the respondents on or about November 28th., 1972.

Respondents promptly appealed and the U. S. Court of Appeals for the Ninth Circuit reversed and remanded on October 17th., 1974.

Petitioners, after substitution of counsel, filed an untimely petition for rehearing on February 28th., 1975, with that Court's permission. The petition for rehearing itself however, was denied April 28th., 1975.

The application for a writ of certiorari by petitioners to this high Court followed.

OPINIONS BELOW

The opinion of the Ninth Circuit Court of Appeals No.73-1545 is reported at 505 F. 2d 268 (1974); and the opinion of the District Court for the District of Montana is reported at 394 F. Supp. 1502 (1972).

PIVOTAL ISSUE

It is evident that all issues in this cause are collateral, ancillary, and dependent upon one central pivotal issue only, which is; Did the respondent class of Northern Cheyenne Indian allottees, heirs and devisees receive a vested property right in the minerals in and under their respective allotments, which is protected by the Fifth Amendment to the U. S. Constitution, by virtue of the Act of June 3rd., 1926, (44 Stat. 690) as

amended ? It is pristine clear that this is a pure question of law.

RESPONDENTS POSITION

It is the respondents position that they do have a vested property right in the minerals, beneath their allotments by virtue of the Act of June 3rd., 1926, (44 Stat. 690) as amended, protected by the Fifth Amendment to the U. S. Constitution, and/or, also, by virtue of the Treaty of 1868, (15 Stat. 655, cited supra), and further that the Ninth Circuit Court of Appeals was correct in so mandating.

TREATY, LEGISLATIVE AND HISTORICAL BACKGROUND

The natural band or tribe of Northern Cheyenne Indians surrendered and laid down their arms against U. S. Armed Forces, and accepted in return the provisions of "The Treaty with the Northern Cheyenne and Northern Arapaho," signed May 10th., 1868 (15 Stat. 655), ratified by Congress July 25th., 1868, and proclaimed August 25th., 1868. There was offer and acceptance, a meeting of the minds, consideration, there was agreement, and there was a legally valid Treaty. Land, both tribal and allotted was promised to the Northern Cheyenne Indians in this historical document, and the land was designated as a "permanent reservation,"1.and was given to the Indians in return for their surrender of all other claims to all other land and territories.

---

1. "Art. 3. If any individual belonging to said tribes of Indians . . . . . he shall have the privilege to select,. . . . . a tract of land within the reservation not exceeding three hundred twenty acres. . . . but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family. . . . . " (Treaty of 1868 cited supra., emphasis supplied.)

(15 Stat. 655 Art. 2, et seq.)

The Northern Cheyenne reservation was then circumscribed and set out in detail by President Chester A. Arthur's Executive Order of November 26th., 1884. (Vol. I of Indian Affairs, Laws and Treaties, of Charles J. Kappler at page 860.) The reservation was later enlarged by President McKinley's Executive Order of March 19th., 1900 (Kappler, cited supra pages 860-861.)

None of these three aforementioned documents reserved any of the minerals in the allotments to the tribe or to the U. S. Government.

The purpose of the Congress in 1887 when the General Allotment Act,(Dawes Act, 24 Stat. 388.) was passed, was in short to do away with tribal lands and issue a patent in fee to the individual Indians with only a restriction on alienation for 25 years. (Dawes Act, cited supra and J. P. Kinney's Study. "A Continent Lost - A Civilization Won," and also "History of the Allotment Policy," by D. C. Otis.)

On June 2nd., 1924, " A Bill Granting Citizenship to Indians, and for other Purposes,"(43 Stat. 253, 8 U. S. C. 3) passed and removed all doubt that an Indian was entitled to constitutional protection.[2.]

Next followed the Act in question: " An Act to Provide for Allotting in Severalty Lands within the Northern Cheyenne Indian Reservation in Montana, and for Other Purposes," of June 3rd., 1926. (44 Stat. 690.)

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2. I think nothing makes the intent and motive of Congress more clear, than the opinion of Attorney General (afterwards Justice) Stone rendered on May 27th., 1924, just a few days before citizenship was conferred on the Indian: ". . . . . These treaty provisions for the allotment of reservation lands all contemplate the final passing of a perfect fee title to the individuals of the tribe. And that meant, of course, that the minerals and all other hidden or latent resources go with the fee." (Emphasis supplied.)

This Act which reserved the minerals beneath the alloted lands for a period of 50 years did not refer to the tribal corporation, but rather to the natural band or tribe of Northern Cheyenne Indians.

The natural band or tribe did not become a federal corporation until after the Act of June 18th., 1934 (48 Stat. 934,) as amended by the Act of June 15th., 1935, (49 Stat. 378) and ratified November 7th., 1936.

The enactment of Public Law 90-424 of July 24th., 1968 (32 Stat. 424,425) followed, the discovery of the immense, untapped coal deposit, the constitutionality of which said Act is here in question, which sought to divest the minerals beneath the allotments from the allottees and vest title in perpetuity in the tribal corporation. Respondents content this was an act of naked confiscation.

LAW AND ARGUMENT

The issue which confronted the Circuit Court, and which is now before this high Court, is purely one of law, and most certainly does not involve the National Energy Policy, the survival of the Northern Cheyenne Tribe or any other such absurdity, as petitioner would lead this Court to believe.

The petitioner's argument that the tribe is threatened with extinction, or that the nation energy crises is involved, has little if any basis in fact, and is at best improper judicial forensic argument.[3.]

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3. Approximately 62% of the surface is owned by the tribal corporation. It is the poor, indigent, and defenseless allottees and their allotments who are threatened with extinction here.

1. THE ACT OF JUNE 3, 1926 (44 STAT. 690.)

The Act of June 3rd., 1926 as amended section 3 reads:

> "That the timber, coal or other minerals, including oil, gas, and other natural deposits, on said reservation are hereby reserved for the benefit of the tribe . . . . . Provided, that at the expiration of fifty years from the date of the approval of this Act the coal or other minerals, including oil, gas and other natural deposits, of said allotments shall become the property of the respective allottees or their heirs . . . . . (emphasis supplied.)

Respondents confidently contend that reasonably prudent english speaking persons everywhere, would agree, just as the Circuit Court mandated, that the language in this critical section of the Act was . . ."simple and plain and its meaning clear to common understanding." (Emphasis supplied; No.73-1545, et al, page 6; 505 F 2d 268; 59 F 2d 654, 655.)

2. MINERALS RIGHTS NOT RESERVED BY THE CONGRESS IN 1926 ACT.

This provision in section 3 of the 1926 Act (cited supra) granting the minerals for a mere term of years to the tribe, with the remainder to the allottees, intentionally omitted any savings clause, reserving clause, or qualifying clause, such as ". . . . . unless otherwise provided for by act of Congress . . . . . " 4.

It had been the policy of Congress in other allotment

4. See Adams vs Osage Tribe of Indians, 59 F. 2d. 653 C. A. 10th., (1932) and see similar phrase "until Congress shall otherwise direct " 41 Stat. 3, 16, 17; and British American Oil Producing Co. vs Board of Equalization, 299 U. S. 159, 164-65 (1936)

statutes, where the lands contained potentially valuable mineral resources, to allot the surface estate while reserving for the tribe for a period of years the minerals beneath these lands, and then qualifying the remainder to further acts of Congress. (E. g., Act of March 3rd., 1921, 41 Stat. 1355 (Fort Belnap Indians); Act of June 4th., 1920, 41 Stat. 751 (Crow Indians); Act of June 28th., 1906, 34 Stat. 539 (Osage Indians.) In each of these prior Acts however, the future interest of the allottees at the expiration of the term fixed was clearly made contingent upon Congress not acting to the contrary. (Adams vs Osage Tribe of Indians, 59 F 2d 653. (10th cir. 1932); Taylor vs Tayrien, 51 F 2d. 884 (10th cir. 1931) et seq.)

Respondents respectfully submit, that petioner's confusion results from his inability or unwillingness, to differentiate between lands held in common by the tribe, and lands held by the allottees, especially as to this intentionally omitted qualifying phrase.(C. I. R. vs Walker, 326 F. 2d. 261, 262 (9th cir. 1964); U. S. vs. Oklahoma Gas & Electric Co., 127 F. 2d. 349, 353-54 (10th cir. 1942).

3. CONTROLLING CASE.

The Circuit Court accurately and properly held the case of Choate vs Trapp, 224 U. S. 665, 675 (1912) as controlling. In that case this high Court considered the nature of the allottee's interest and proclaimed:

> ". . . . . Under the Fifth Amendment there was no more power to deprive (the allottee) of the exemption than any other right in the property. No statute would have been valid which reduced his fee to a life estate, or attempted to take from him ten acres, or fifty, or the timber growing on the land. . . . . If he is bound, so is the tribe and the Government. . . . . " (emphasis supplied.)

(See 224 U. S. at 673-674.)

Petitioners argument that Choate is not controlling in the instant case because the Choate's decision was based on contract, (Atoka Agreement) is also erroneous. Respondents submit that the Act of June 3rd., 1926, (44 Stat. 690) if valid at all, must be predicated upon, and have its legal efficacy derived from the Treaty of 1868, (15 Stat. 655) under which allotments were originally given to individuals.

Courts have repeatedly held that:

> ". . . . . All treaties made or which shall be made under the authority of the United States shall be the supreme law, of the land and the judges in every state shall be bound thereby anything in the Constitution or laws of any state to the contrary not withstanding." (Emphasis supplied.)

Pronovost vs U. S.,232 U. S. 487, 58 L. Ed. 696, 34 S. Ct. 391; U. S. vs The Schooner Peggy,(U. S.) 1 Cranch 103, 2 L. Ed. 49; Louisville & N. R. Co., vs Scott, 133 Ky. 724, 118 S. W. 990, affd. 219 U. S. 209, 55 L. Ed. 183, 31 S. ct. 171; Butschkowski vs Brecks, 94 Neb. 532, 143 N. W. 923, U. S. Const. Art. 6.) Treaties are obviously far more sacred and binding than a mere contract and are the supreme law of the land.

Even petitioners contention that only property rights arising from contract are protected is in error, because the cases cited by him in support of such position do not involve property rights.

(See U. S. vs Jackson, 280 U. S. 183; Brader vs James, 246 U. S. 88; Tiger vs Western Investment Co., 221 U. S. 286; et seq.)

It has also been held that mere enrollment for the purpose of Indian allotments of land concerns property rights and cannot be taken away without notice and opportunity to be heard.

Duncan Townsite Co., vs Lane, 245 U. S. 308, 62 L. Ed. 309, 38 S. Ct. 99; United States ex rel. Turner vs Fisher, 222 U. S. 204, 56 L. Ed. 165, 32 S. Ct. 37.)

4. CORRECT RULE OF CONSTRUCTION.

Petitioners harp that the Circuit Court errored in applying the rule of construction as set out in Adams et al vs Osage Tribe of Indians, (59 F. 2d. 653; C. A. 10th 1932, Cert. den. 287 U. S. 652, 77 L. Ed. 563, 53 S. Ct. 116.

The Court in that case declared:

> "Treaties and legislative Acts relative to Indians should be construed as illiterate people would understand them." (Cited supra)

Certainly, the individual allottees, understood from both the Treaty of 1868, (cited supra) and especially the Act of 1926 (cited supra) that they received allotments of land, and at least under the Act of 1926, that they received minerals at the end of fifty years beneath these allotments. The Circuit Court rightfully found the language,

> ". . . . simple and plain, and its meaning clear to common understanding." (59 F 2d 654,655; 505 F 2d 268)

Petitioners would have this Court do deliberate violence to the plain, clear, concise, simple and direct expressed intent of the Congress, in section 3 of the Act of 1926 to support their contentions. Respondents think not!

5. 1968 ACT RETROACTIVE LEGISLATION 82 STAT. 424, 425

The title vested in the allottees either by virtue of the 1868 Treaty (cited supra) and/or by virtue of the 1926 Act, or both and the Congress clearly attempted to divest it by the

retroactive 1968 Act, (cited supra) which was to give the minerals forever to the tribal corporation. Such legislation that has latent in its design and purpose naked confiscation, political expediency and economical convenience, has been repeatedly held violative of the Fifth Amendment.[5] Nobel vs Union River Logging Railroad, 147 U. S. 165 (1893); Danzer Co., vs Gulf R. R.,268 U. S. 633 (1925) Perry vs U. S. 294 U. S. 330, (1935); De La Rama S. S. Co., vs U. S. 344 U. S. 384 (1953); Cf. F. H. A. vs Darlington, Inc. 358 U. S. 84 (1958.)

Petitioners arguments that the coal is vital to the country degrades this high forum from a fountainhead of justice to a mere political arena of expedience and convenience.

6. INDIAN LOBBYING IS NOT INDICATIVE OF CONGRESSIONAL INTENT.

Petitioner alleges that the evidence of Indian lobbying, (see his appedix A-49 and A-53) documents and letters to and from Senator Thomas J. Walsh to and from the tribal lobbyists, establishes not only the desire of the Northern Cheyenne people, but also the legislative intent of the Congress. Here again, this reasoning lacks reason or substance.

Of the approximately 1,408 enrolled Northern Cheyenne residing on the reservation at the time of the petition was allegedly drafted and executed (the petition itself is undated); only 493 subscribed by signing or making their marks. This number represents a little over one-third of the total number of enrollees, not even a bare majority.

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5. The tribal corporation having slept on their rights for almost fifty years, and after having discovered the vast coal deposit, lobbied Congress for the 1968 Amendment, so that the tribe might conveniently expedite the sale of the coal to the giant coal conglomerates, and thereby eliminate the need to negotiate with the individual Indian allottee.

This can hardly be said to reflect the will of the people.[6] The exhibits do show that the group of lobbyists did want 320 acres per allotment which was interestingly the size of the allotments designated in Article 3 of the 1868 Treaty (cited supra.)

Also interestingly, here again, the allottees were to get the minerals after 50 years. In the final passage of the bill Congress saw fit to grant only 160 acres to each allottee, (Act of 1926, 44 Stat. 690) ignoring the express desire of the lobbyists for 320 acres.

Taking the exhibits at face value in their most favorable interpretation, assuming they are even admissable in evidence,[7] they simply show that a special interest group of Northern Cheyenne Indians lobbied Congress for a bill alloting lands, reserving minerals for fifty years to the natural band, or tribe of Northern Cheyenne Indians collectively, who are the Respondent Class. (The tribe became a federal corporation after Act of June 18th., 1934; 48 Stat. 934.) It therefore, cannot be reasonably maintained that a document subscribed by only 493 Indians or less, of some 1,408 enrollees residing on the reservation, can conclusively establish the understanding that all enrollees had, and certainly not now have, of the 1926 Act, (cited supra)

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6. In the original exhibits submitted with the petition for rehearing in the Circuit Court, the letter exhibit that accompanied the petition was endorsed by three chiefs, two of which had to make their marks, of the headsmen signing all three had make their marks, and of the total Indians subscribing these documents 227 had to make their marks, also, the same hand penned many of the different signatures. One wonders if they could not write, whether they could read or even understand the document at all.

7. Courts have repeatedly held that the language of a statute must be of an "obscure or doubtful meaning" to warrant an inquiry into legislative history. The meaning of this staute (Act of 1926) is "simple and plain and its meaning clear to to common understanding"(305 F. 2d. 268) (See Wiseman vs Madison Cadillac Co.,191 Ark. 1021, 88 S. W. 2d 1007, 103 A. L. R. 1208; The Delaware 161 U. S. 459, 474; 16 S. ct.516, 40 L.Ed. 771; Platt vs Union Pacific Railroad,99 U. S. 48, 67, 25 L. Ed. 424; Wright vs Vinton Branch of Mountain Trust Bank of Roanoke, 300 U. S. 440 (1937 Brandeis, J.) Jones on Evidence, 6th Ed. Sect.2:22.

which was passed after the fact! ! ! It most assuredly cannot reasonably be maintained that it could possible be interpreted as to reflect the intent of the Congress. I think the reverse is closer to the truth, and that was Congress rejected the efforts of the lobbyists in these certain provisions and saw fit to pass the 1926 Act (cited supra) in its final form.[8.]

7. SUMMARY

1. There can exist no doubt that the rights obtained by the individual Northern Cheyenne Indians in their allotments by the Treaty of 1868 (15 Stat. 655), conveyed both surface and subsurface rights. Failure to reserve the minerals in the alloted lands either to the tribe or to the government, the U. S. conveyed them, and the treaty must be construed against the United States and in the most favorable light to the illiterate Indian Wards. It must be construed liberally for the individual beneficiary allottees. This is also true of the 1926 Act (cited supra; Adams vs U. S. cited supra, et seq.)

2. The Executive Orders of both President Arthur and McKinley circumscribing in detail the reservation and enlarging it was an official recognition of these vested property rights in the allottees.

(Chippewa Indians of Minnesota vs U. S., 301 U. S. 358, 375, 376, 57 S. ct.833, 81 L. Ed. 1156; and United States vs Klamath Indians, 304 U. S. 119, 58 S. ct. 799, 82 L. Ed. 1219; and Shoshone Tribe vs U. S., 299 U. S. 476, 497, 57 S. ct. 244, 251, 81 L. Ed. 360; and U. S. vs Creek Nation, 295 U. S. 103, 109-110, 55 S. ct. 681, 684, 790. Ed. 1331.

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8. The words of Congress must be taken within their "common understanding" (59 F. 2d 653; and 505 F. 2d 268.)

3. The Northern Cheyenne were granted citizenship by the Act of June 2nd., 1924 (43 Stat. 253) removing all doubt that they were entitled to its constitutional protections.

4. The allotment Act of June 3rd., 1926, (44 Stat. 690) predicated upon, having its legal efficacy derived from the Treaty of 1868, (cited supra) confirmed and further recognized the vested property rights of the allottees, including the minerals, and section 3 thereof, reserving the minerals to the tribe for 50 years was probably in abrogation of the provisions of said Treaty. (In support see cases cited in paragraph two above.)

5. In any event, the minerals were reserved if at all, to the natural band or tribe of Northern Cheyenne Indians, the respondents, and not to the petitioner tribal corporation.[9.]

6. The tribal corporation may be illegally constituted, and may not exist at all, having failed to comply with the provisions of the 1868 Treaty. (15 Stat. 655., Art. 8.)[10.]

The cases of Adams (cited supra) involving the Osage Statute, and of Taylor (cited supra) involving the same Osage Statute, and the case of British-American Oil, involving the Blackfeet Statute, demonstrate that the similar phrases, also found in the Crow Statute, are all absent in the Northern Cheyenne Statute.[11.]

8. Congress explicitly surrenders the decision on the validty of the Act of 1968 and leaves it entirely up to the Courts,[12.]

---

9. The tribe did not incorporate, if at all, until after the Act of June 18th., 1934. (48 Stat. 934.)

10. ". . . . no cession by the tribe shall be understodd or construed . . . . as to deprive without his consent, any individual member of the tribe of his right to any tract of land . . . . . "

11. " . . . . until Congress shall otherwise direct."

12. Act of July 28th., 1968, 82 Stat. 424, 425.

indicating an obvious reservation as in its validity.

9. Congress has unquestionably recognized vested title in the surface and subsurface rights of the allottments which cannot now be taken without just compensation.

10. The intent of Congress at the time of the enactment of 1920 (41 Stat. 690) was to give the allottees a vested property right in the minerals beneath their allotted lands subject only to a term of years. The motive was compel the Indian to follow the whiteman society, and the tribe took nothing, unless it be a term of 50 years merely. (Choate vs Trapp, cited supra).

11. Issuance of fee patents are ministerial acts merely, and are enforceable in the Courts. (United States vs Arenas, 15 8 F. 2d. 730.)

12. There has been a wrongful taking of the vested property rights in the minerals beneath the allotted lands within the meaning of the Fifth Amendment that requires just compensation. The 1968 Act (82 Stat. 424, 425) is retroactive legislation and therefore void and unconstitutional and was an act of deliberate and naked confiscation.

CONCLUSION

The mandate of the Circuit Court must be upheld and the petition for writ of certiorari denied.

Respondents are confident that this High Court will not permit the taking of valuable and unique mineral rights, from the entire class of Northern Cheyenne allottees, heirs and devisees without compensation, thereby degrading and reducing them to something less than American citizens entitled to constitutional protections.

It has been proffered, that, "sharp wits, like sharp knives

do often cut their owners fingers."

Congress in its eagerness to compel the Indian to follow the Whiteman's ways " cut their owners fingers."

> "The government may in its dealings with Indians create property rights which, once vested, even it cannot alter, and such property rights may result from agreements either in the form of a treaty or a statute; the important consideration being that there should be the essentials of a binding agreement between the government and the Indian and the resultant vesting of a property right in the Indian.
> (Emphasis supplied. Morrow, County Auditor, et al., vs U. S. (1917) 243 Fed. Reporter 694.)

Respondents respectfully submit the petition should be denied.

Respectfully submitted,

Lewis E. Brueggeman
Attorney for Respondents

CERTIFICATE OF SERVICE

I, Lewis E. Brueggemann, hereby certify that on the 8th day of August, 1975, I served a copy of the foregoing Opposition To Petition For Writ Of Certitiorari and Affadavit In Support Of The Motion To Appear And Oppose In Forma Pauperis on the attorneys of record for this cause by mailing true and correct copies thereto to said attorneys in an envelope, first class postage prepaid, addressed to them as follows:

Otis L. Packwood
United States Attorney for
The District of Montana
P. O. Box 1478
Billings, Montana 59103

Steven L. Bunch
Attorney at Law
601 Power Block
Helena, Montana 59601

Ziontz, Pirtle, Morisset,
Ernstoff & Chestnut
Attorneys at Law
c/o Steven Chestnut
208 Pioneer Building, 600 - 1st Ave.
Seattle, Washington 98104

Lewis E. Brueggemann
Counsel for the Northern Cheyenne
Respondent Class

SUBSCRIBED AND SWORN to this 6th day of August, 1975.

Notary Public for the State of
Montana. Residing at Billings,
Montana. My commission expires:
6-7-8-77

(SEAL)

RECEIVED
1975
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-145

THE NORTHERN CHEYENNE TRIBE, Petitioner,

vs.

WILLIAM HOLLOWBREAST, GRACE KINGFISHER, RAYMOND BRADY, SR., KENNETH BEARTUSK, WINONA FOX, BESSIE ELKSHOULDER, NELLIE ROBINSON, RAYMOND HARRIS, SR., DELORES WALTERS MURDOCK, ELVA L. LITTLECHIEF WILLIAMSON, JAMES BOWEN, and MYRON L. LITTLEBIRD, individually and as representatives of all allottees, their heirs or devisees who received allotments pursuant to the Act of Congress of June 3, 1926, as amended, Respondents.

AFFIDAVIT IN SUPPORT OF THE MOTION
TO APPEAR AND OPPOSE IN FORMA PAUPERIS

I, James D. King, Sr., individually and as representative of all allottees heirs and devisees who received allotments pursuant to the Act of Congress of June 3rd., 1926 as amended, and also respondent in this cause, depose and say that I am representative of respondent class, that I am indigent and impoverished as is said class, and that this affidavit in support of the motion to proceed, appear and oppose petitioners application for Writ of Certiorari, in forma pauperis without being required to prepay any fees, costs or of printing of briefs or give security therefore.

I, James D. King, Sr., as representative of respondent class further swear, that the above statements pertaining to said respondent class's ability to pay costs of appearing and opposing the petitioner's application for Writ of Certioari I believe to be true and correct.

I further understand that a willful false statement herein, in this affadavit will subject me to the penalties for purgery.

James D. King Sr.
James D. King, Sr.,

SUBSCRIBED AND SWORN to this 6th day of August, 1975.

(SEAL)

Lewis E. Breeseman
Notary Public for the State of Montana
Residing at Billings, Montana
My commission expires: Sept 25th 1976